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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL
CATALDO, JULIAN
SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE'S MOTION TO QUASH
SUBPOENA TO KENT WALKER**

Judge: Hon. Mag. Alex G. Tse

Date: July 30, 2025

Time: 9:30 a.m.

Location: A – 15th Floor

1 Plaintiffs respectfully submit this short opposition to Google’s motion to quash the trial
 2 subpoena served for Kent Walker. Plaintiffs seek to ensure Mr. Walker’s availability only as a
 3 possible impeachment or rebuttal witness. Whether Mr. Walker is called at all will depend on
 4 what Google says and offers into evidence at trial. Plaintiffs’ subpoena was served to ensure that
 5 if calling Mr. Walker as a witness is appropriate, he will be available. For the Court’s
 6 consideration when ruling on Google’s motion to quash, Plaintiffs offer three points:

7 **First**, because Plaintiffs would only call Mr. Walker as a witness for impeachment or
 8 rebuttal purposes, whether Plaintiffs seek to call Mr. Walker is entirely contingent upon the
 9 testimony of Google’s witnesses. The Court therefore may wish to defer any ruling on this issue.
 10 *See, e.g., United States v. Dorsey*, 2015 WL 4232517, at *13 (C.D. Cal. July 6, 2015) (“Because
 11 the government disclaims any intention of introducing this evidence in its case-in-chief and its
 12 arguments for admissibility are necessarily contingent on whether and how Dorsey testifies, the
 13 Court defers ruling on the admissibility of this evidence for impeachment until trial.”); *In re*
 14 *Tableware Antitrust Litig.*, 2007 WL 781960, at *2 (N.D. Cal. Mar. 13, 2007) (deferring decision
 15 whether to allow defendants to use class representatives’ relationships with class counsel,
 16 previous litigation, and fee agreements as impeachment evidence until it arose in trial); *Ponds v.*
 17 *Force Corp.*, 2017 WL 3866142, at *2 (E.D. La. Jan. 10, 2017) (“The Court cannot presently
 18 weigh the probative value of the ... impeachment evidence. Further, the Court is in no position
 19 prior to trial to state what [defendant’s] witnesses will or will not testify to on the witness stand.
 20 For those reasons, the best course of action is to defer a ruling ... until trial.”).

21 **Second**, Mr. Walker’s position as a Google attorney does not establish a basis to quash
 22 the subpoena. *See, e.g., Waymo LLC v. Uber Techs., Inc.*, 2017 WL 11917916, at *1 (N.D. Cal.
 23 Sept. 28, 2017) (permitting deposition of Uber’s Chief Legal Officer despite finding she was an
 24 apex deponent because she had first-hand knowledge of facts relevant to the case); *Moriarty v.*
 25 *Am. Gen. Life Ins. Co.*, 2018 WL 11453817, at *6 (S.D. Cal. Dec. 31, 2018) (allowing deposition
 26 of company’s assistant general counsel because even if he was an apex witness, he “possesse[d]
 27 ‘unique first-hand, non-repetitive knowledge’ of the critical facts at issue in this case”). Here,

1 Plaintiffs' examination of Mr. Walker would only cover nonprivileged topics about which Mr.
 2 Walker has firsthand knowledge. That includes (i) the "Walker Memo" signed by Mr. Walker,
 3 and about which Mr. Walker testified publicly in a case before Judge Donato, which instructed
 4 Google employees about how to protect communications on "hot topics" from production in
 5 litigation, and (ii) specific documents that Google produced in this case that include Mr. Walker,
 6 including one email featured in demonstratives disclosed by Google.

7 **Third**, the apex doctrine does not warrant quashing this subpoena. *See In re Apple*
 8 *iPhone Antitrust Litig.*, 2021 WL 485709, at *4 (N.D. Cal. Jan. 26, 2021) ("When a lawsuit
 9 concerns important aspects of a company's business model that are plainly the result of high-
 10 level executive decisions, we should expect that high-level executives will be deposed, and their
 11 testimony will be relevant and proportional, and the depositions will not be abusive or
 12 harassing."). Mr. Walker is responsible for the Walker Memo, and he should have firsthand
 13 knowledge with respect to both his prior testimony before Judge Donato and documents produced
 14 in this case where he was identified. Those should be fair game for impeachment or rebuttal
 15 testimony.

16 Plaintiffs respectfully request that the Court either deny the motion or defer any ruling
 17 on Google's motion to quash.

18
 19 Dated: August 1, 2025

By /s/ Mark C. Mao

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